



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**

**999 18<sup>TH</sup> STREET - SUITE 300**

**DENVER, CO 80202-2466**

**<http://www.epa.gov/region08>**

**September 22, 2003**

Ref: 8ENF-T

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Mr. Michael Dutton, Owner  
Fort Bent Feeders  
32940 Highway 194  
La Junta, Colorado 81050

Re: Findings of Fact and Order for  
Compliance under the section 309 (a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

Dear Mr. Dutton:

Enclosed is a United States Environmental Protection Agency ("EPA") Region 8 Order for Compliance ("Order") issued to Michael Dutton (owner and operator of Fort Bent Feeders) for violating the Clean Water Act by failing to respond to a section 308 information request. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "Act"). The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order, issued after consultation with the Colorado Department of Public Health and Environment ("CDPHE"), describes the actions necessary for Fort Bent Feeders to achieve compliance with the Act. Enclosed is also a memorandum from the CDPHE regarding EPA enforcement proceedings in Colorado. The Order requires you to notify EPA, in writing, within five (5) days whether you intend to comply with the Order. Mr. Dutton is required to respond within thirty (30) days to the section 308 Request for Information questions which are listed in Paragraph 18 of the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the Act and any Orders issued thereunder. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action, an administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the Act or with an Order issued pursuant to the Act.



Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in the U.S. District Court under sections 309(b), (c) and (g) of the Act for the violations cited in the Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to Michael Dutton's compliance with the Act, the most knowledgeable people on my staff regarding these matters are Patricia Ochoa, Technical Enforcement, at (303) 312-6198, or Alicia Hoegh, Enforcement Attorney, at (303) 312-6876.

Sincerely,

**Michael T. Risner for/**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Dave A. Akers, CDPHE (w/encl.)

1. Michael Dutton (Respondent) is the owner and operator of an entity named Fort Bent Feeders which has its principle place of business at 32940 Highway 194, La Junta, Colorado 81050. 40 C.F.R. § 122.2.
2. Respondent is a “person” within the meaning of the Act. 33 U.S.C. § 1362(5).
3. On November 8, 2000, EPA conducted an inspection of Respondent’s feedlot.
4. EPA regulations define a “concentrated animal feeding operation,” (hereinafter CAFO), as a lot or facility where more than 1,000 animals (for slaughter or feeder cattle) have

been, are, or will be stabled or confined and fed or maintained for at least 45 total days in any 12-month period, and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing period over any portion of the lot or facility.

40 C.F.R. § 122.23 (b)(3); 40 C.F.R. § 412.10.

5. Respondent stated to EPA inspectors that he is the owner and operator of Fort Bent Feeders and that as of the date of the inspection the feedlot confined 4,700 slaughter or feeder cattle for a total of 45 days or more in a 12-month period, and that neither crops, vegetation, forage growth, nor post-harvest residues are sustained during the normal growing season over any portion of the feedlot. Therefore, Respondent's feedlot is a CAFO, within the meaning of the regulations. 40 C.F.R. § 122.23(b)(3).
6. The Act and EPA regulations prohibit the discharge of process wastewater pollutants to waters of the United States from a CAFO except as a consequence of a chronic or catastrophic rainfall event. 33 U.S.C. § 1311(a); 40 C.F.R. § 412.13.
7. At the time of the inspection, EPA inspectors observed that the Arkansas River was adjacent to the facility.
8. The Arkansas River meets the definition of "waters of the United States" and the definition of a "navigable water" or a tributary of a "navigable water" as found in the Act and EPA regulations. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
9. EPA regulations define "process generated wastewater" as any process generated wastewater and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final product used in or resulting from the production of animals. 40 C.F.R. § 412.11(c).
10. The discharge of process generated wastewater into navigable waters from a CAFO is a

“pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

11. Respondent’s CAFO is a “point source” within the meaning of the section 502(14) of the Act and the regulations. 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
12. At all times relevant to this Complaint, Respondent has not had a national pollutant discharge elimination permit for such discharges.

#### FINDINGS OF VIOLATION

13. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A) authorizes the Administrator of the EPA to require the owner or operator of any point source discharge to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance.
14. On November 21, 2002, EPA mailed to Respondent a request for information, pursuant to section 308 of the Act, 33 U.S.C. § 1318. The purpose of the letter was to obtain information to determine if Respondent was in compliance with the Act. Respondent was required to respond within twenty (20) days of receipt.
15. On November 25, 2002, a representative or agent of the Respondent, signed a U.S. Mail Certified Mail Request (article number 7002-0460-0002-8184-3353) and received EPA’s Request for Information letter described in paragraph 14, above. The signature on the return receipt service card appears to be one of Denise Dutton. EPA received a request for an extension for the response and granted the extension until January 10, 2003. A second extension was granted until January 31, 2003.
16. On August 1, 2003, Respondent received an Opportunity to Confer letter from EPA for failure to respond to the Request for Information. Respondent was required to respond to

the Opportunity to Confer letter by August 15, 2003. Respondent, to date, has not responded to either the Request for Information or the Opportunity to Confer letter and is therefore in violation of section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A).

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COMPLIANCE ORDER

Pursuant to the authority of sections 308 and 309 of the Act, 33 U.S.C. §§ 1318, 1319, Respondent is ordered to:

17. Within five (5) days after receipt of this Compliance Order (“Order”), give written notice to EPA, of its intent to comply with the requirements of the Order.
18. Within thirty (30) days after receipt of this Order, submit the following information:
  - a. Documentation of any discussions you have had and any recommendations you have received from professional sources since the EPA inspection regarding control of contaminated runoff or process wastewater from your facility. Professional sources include, but are not limited to, the Natural Resource Conservation Service (NRCS), state environmental agencies, county extension agents and licensed professional engineers. Documentation must include copies of all letters, telephone records, contract discussions, and any other communication. Provide date(s) and summary of any discussions.
  - b. A detailed description, including specific dates, of actions taken since the EPA inspection to prevent the discharge of contaminated runoff from your facility. The description should address any of the following, if applicable, and any other response taken: diversion of water; improvements to containment structures; a change or improvement in manure storage methods; removal of stockpiled manure; land application of manure; and/or relocation of animals and pens. The description shall include a map or sketch of the facility layout that identifies locations of surface waters, man-made conveyances such as ditches and pipes, discharge points and runoff paths, buffers and diversion structures, manure storage facilities, and animal pens/confinement. The map must show the distance of animals from surface waters and the name of the surface waters. The description of discharge points and runoff paths should include where water flows into ditches during rain events.
  - c. An itemized list of all costs including, but not limited to, consultant fees, engineering costs and any other expenses incurred to implement the actions described in item b above with copies of contracts, purchase orders, agreements or other documents which show payment for the expenses.

d. An evaluation of your containment structures' ability to store all process wastewater and runoff from a 25-year, 24-hour storm event. The evaluation must include all measurements used in the analysis including the size of the runoff area, design specifications for the process wastewater and runoff containment facilities, runoff coefficients applicable to the site, and the magnitude of a 25-year, 24-hour storm event at your facility.

e. Information concerning the current operation of your facility including the type and number of animals at your facility (dairy cattle, swine, beef cattle, etc.), how many days these animals are confined at the facility in a 12-month period and how long your facility has been in operation.

f. A detailed description of land application of manure procedures including practices employed to ensure that contaminated runoff does not leave land application sites. The description shall include a map or sketch and identify the location of the site, the name of surface waters that receive runoff and the distance from the site to such waters.

g. A detailed schedule and estimated costs of actions planned to prevent the discharge of process wastewater and contaminated runoff from your facility. The description shall include all information noted in items b and d above.

h. A detailed description of any changes related to expansion or closure of your facility that have occurred since the time of the inspection or are anticipated to occur within the next five years. The description shall identify when the changes did or are expected to occur, the current or projected number and types of animals present (dairy cattle, swine, beef cattle, etc.), and the number of days animals are or will be confined over any 12-month period. The description also shall include all information noted in items b and c above as it relates to changes of your facility due to expansion or closure.

i. A schedule for completion and submittal of the concentrated animal feeding operation permit application to the Colorado Department of Public Health and Environment.

j. The name of and the distance to the nearest surface water including, but not limited to, rivers, creeks, intermittent streams, ditches, ponds, lakes, reservoirs, gullies, mudflats, tributaries, arroyos and wetlands.

k. All available information regarding any sensitive environments, wildlife habitats or refuges, endangered species, water wells, or drinking water intakes in the area. Please list them and state their location and distance from the facility. Provide any well water quality monitoring data available.

l. Provide the total aboveground storage capacity for any type of oil at the facility.

Include a description of any type of container which produces, stores, processes, recycles, transports or contains any type of oil in any capacity. Note that oil includes, but is not limited to, petroleum oils, fuel (i.e., gasoline, diesel or other oil based fuels), sludge, synthetic oils, oil refuse, and oil mixed with wastes other than dredged soil. Oil also includes animal fats, vegetable oils and fish oils.

m. Provide the total underground oil storage capacity for any type of oil at the facility.

n. Provide the oil storage capacity of the single largest container/vessel at the facility.

o. Describe whether the facility transfers oil to or from tanker trucks, railcars, vehicles, or any type of rolling stock.

p. Provide a copy of your Spill Prevention Control and Countermeasures (SPCC) Plan, as required by 40 C.F.R. part 112. If you have not prepared a SPCC Plan prior to receipt of this letter, and your facility meets the storage capacity requirements to develop a SPCC Plan, you must prepare and implement a SPCC Plan in accordance with the revised SPCC regulations which were published in the Federal Register 67 FR 47041 (July 17, 2002). If you have not prepared an SPCC Plan, provide a schedule for completion of the SPCC Plan. A guidance document on SPCC requirements for farms and ranches is enclosed.

q. If you have prepared but have not fully implemented your SPCC plan, list what portions of the SPCC Plan implementation remain to be completed and the schedule for implementation.

r. Describe, in detail, any spill, discharge or release into waters of the U.S., including, wetlands, intermittent streams, arroyos, or other water bodies from this facility within the past five (5) years. State the type of all substances released, including the chemical name, formula, specific gravity and the waterway affected. If the material discharged was a mixture, please give the percentages of substances in the mixture or solution. Use the format below:

Date	Substance	Source	Quantity	Waterway Affected/Threatened	Cause
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s. Describe any measures taken to prevent or mitigate future discharges from the facility following the spills, releases or discharges listed above.

#### OTHER PROVISIONS

19. EPA regulations protect confidential business information. 40 C.F.R. part 2, subpart B.

If Respondent asserts a business confidentiality claim pursuant to these regulations for



information required to be submitted under this order, such information shall only be provided to EPA. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in the regulations. Unless a confidentiality claim is asserted at the time the information is submitted, the information shall be provided to both EPA and the Colorado Department of Public Health and Environment as specified below, and EPA may make the information available to the public without further notice to you.

#### CONTACTS FOR SUBMISSIONS

20. Submissions required by this Compliance Order shall be sent to:

U.S. Environmental Protection Agency	Colorado Department of Public Health
Region 8 (8ENF-T)	and Environment (W-P-B2)
999 18 <sup>th</sup> Street, Suite 300	4300 Cherry Creek Drive South
Denver, CO 80202-2408	Denver, CO 80246-1530
Attn: Patricia Ochoa	Attn: Ron Jepson

POTENTIAL FURTHER ENFORCEMENT

21. Nothing in this Order shall be construed to relieve Respondent of the requirement to obtain and comply with any NPDES permit or other applicable requirements of other federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any other legal requirement.
22. Violation of this Order, failure to submit the required information, or making a false statement under section 308 of the Act, may be punishable by criminal fines and/or imprisonment, and/or a civil action for appropriate relief, including a permanent or temporary injunction, in the district court of the United States.

The effective date of this Order shall be the date of receipt by Respondent.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Date: 9/19/03

Michael T. Risner for/  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE  
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 22, 2003.**